

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

JAMES HOLMES,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No.: 5:13-cv-8001-RDP

MEMORANDUM OPINION

Before the court is the Motion to Vacate, Set Aside, or Correct Sentence filed pursuant to 28 U.S.C. § 2255 on February 4, 2013 by Movant James Holmes, a federal prisoner acting pro se. (Doc. #1). Movant requests that the court adjust his sentence pursuant to the Fair Sentencing Act, 124 Stat. 2372, which Movant submits is applicable in his case under the rule recently announced in *Dorsey v. United States*, 132 S. Ct. 2321 (2012). (Doc. #1 at 2). However, regardless of the merits of the claim, the court cannot hear this case at this time because it is a successive petition filed without the permission of the United States Court of Appeals for the Eleventh Circuit. Therefore, the motion is due to be denied for want of jurisdiction.

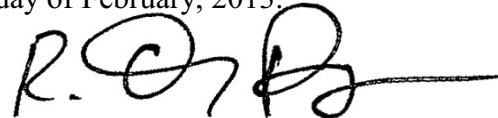
Movant challenges his criminal sentence, issued on February 16, 2005, for Conspiracy to Possess With Intent to Distribute 50 Grams or More of a Mixture and Substance Containing a Detectable Amount of Cocaine Base under 21 U.S.C. §§ 841(b)(1)(A), 846(a)(1) and Maintaining a Place for the Purpose of Manufacturing and Distributing a Mixture and Substance under 21 U.S.C. § 856(a)(1). (Doc. #1 at 1-2; see Doc. #67 in Case No.: 5:04-cr-63-RDP-RR-2). After appealing that sentence to the Eleventh Circuit, Movant filed his first Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 on March 22, 2007. (Doc. #1 in Case No.: 5:07-cv-8012-

RDP-RRR). That motion was denied on February 17, 2009. (Docs. #9, 10, and 11 in Case. No.: 5:07-cv-8012-RDP-RRR). Movant did not appeal that decision. On February 4, 2013, Movant filed this second Section 2255 Motion to Vacate, Set Aside, or Correct Sentence. (Doc. #1).

A second or successive motion under 28 U.S.C. § 2255 “must be certified as provided in section 2244 by a panel of the appropriate court of appeals.” 28 U.S.C. § 2255. Section 2244 provides that “before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Absent an order from the court of appeals authorizing the consideration of the application, “the district court lacks jurisdiction to consider a second or successive petition.” *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003); *see also United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

Because Movant has not obtained an order from the Eleventh Circuit authorizing this court to consider this successive Section 2255 motion, this court lacks jurisdiction to consider the instant Section 2255 motion. (Doc. #1). Accordingly, the motion is due to be denied for want of jurisdiction. A separate order will be entered in accordance with the terms of this memorandum opinion.

DONE and **ORDERED** this 6th day of February, 2013.

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE